IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1845 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BJ BHAGORA

Versus

UNION OF INDIA,

Appearance:
MR HARESH J TRIVEDI for Petitioner
MR B I MEHTA for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/05/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. In this petition under Article 226 of the Constitution of India, a very short, but substantial question, which has surfaced is, whether the impugned order dated 20.4.2000 recorded by one Member (Coram: A.S. Sanghvi) of the Central Administrative Tribunal, Ahmedabad Bench, in O.A.No. 565 of 1998 with M.A. No. 574 of 1998, is legal, valid and competent in view of the provisions of rule 154 (c) of the Central Administrative Tribunal Rules of Practice, 1993 ('the Rules' for short) read with Appendix VII of the Rules, which prescribes the mode to entertain the O.A. by the number of persons constituting a Bench.

2. Rule 154 of the said Rules prescribes Classification of cases Subjectwise/departmentwise. Rule 154 (c) of the said Rules reads as under:

"(c) Subjectwise classification shall be made in accordance with Appendix VII, as may be modified by the Chairman from time to time".

Appendix VII deals with Subjectwise classification Division Bench cases. Sr.Nos. 20 and 21 are relevant for our purpose which read as under:

"20. Selection/Promotion.
21.Seniority/Confirmation".

3. It leaves no any manner of doubt that the O.A. in the nature of claiming promotion, seniority, etc., are required to be adjudicated upon by the Bench consisting of two Members. Probably for that very reason, it appears, the learned advocate appearing for the applicant, as found from the impugned order, was required to state whether he has objection or not if O.A. is disposed of with the direction to give consequential benefits of the order. Needless to mention that it is a settled proposition of law that if the Court or a Tribunal or an authority has no jurisdiction to do or entertain a particular application or a grievance without complying or fulfilling the statutory requirements of the constitution of the Forum, the number of persons and the strength of the forum, cannot be cured with or without objection. It is also a settled proposition of law that any matter which is entertained and adjudicated upon by a single Bench or a person not competent to finalize or entertain, entertains and decides the application, grievance or dispute, it would be nothing but an order, judgment or decision without jurisdiction. The outcome of the exercise will be that it would be an incompetent forum and, therefore, the order, judgment or decision, as

the case may be, obviously, would be unauthorized, incompetent or illegal. There is a purpose and policy behind the doctrine of "coram non-judice". The jurisdiction cannot be conferred by consent nor it can be fettered unless there is a choice between more than one place in terms of territorial jurisdiction. The ad invitum order also, before the coram non-judice, would not, therefore, be a legal and valid one. Therefore, the impugned order is required to be quashed and set aside.

4. Consequently, the impugned order suffering from the vice of coram non-judice and running against the provisions of the Rules read with Appendix VII is quashed and set aside. It is, therefore, directed that the matter shall be remitted back to the Central Administrative Tribunal and it shall be heard by the competent Bench in terms of the provisions of the Rules, de-novo. The petition, therefore, shall stand allowed. Rule is made absolute to the aforesaid extent leaving the parties to bear their own costs.

(J.N. Bhatt, J.)

2.5.2001. (A.M. Kapadia, J.)

(karan)